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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 871-A

12 **JOSEPH FRANCIS DOMINICK, III**
13 **PO Box 1216**
Red Bluff, CA 96080

A C C U S A T I O N

14 **Land Surveyor License No. L 5110**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. David Brown (Complainant) brings this Accusation solely in his official capacity as
20 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department
21 of Consumer Affairs.

22 2. On or about April 21, 1982, the Board for Professional Engineers and Land Surveyors
23 issued Land Surveyor License Number L 5110 to Joseph Francis Dominick, III (Respondent).
24 The Land Surveyor License was in full force and effect at all times relevant to the charges
25 brought herein and will expire on June 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 8780 of the Code states:

The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon.

By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

(b) Any negligence or incompetence in his or her practice of land surveying.

....

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

....

(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.

5. California Code of Regulations, Title 16, Section 404 states, in part:

For the purpose of the rules and regulations contained in this chapter, the following terms are defined. No definition contained herein authorizes the practice of professional engineering as defined in the Professional Engineers Act.

....

(n) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, "incompetence" as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

6. Section 8759 states, in part:

(a) A licensed land surveyor or registered civil engineer authorized to practice land surveying shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or registered civil engineer and the client, or his or her

representative, prior to the licensed land surveyor or registered civil engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

....

(4) A description of the procedure that the licensed land surveyor or registered civil engineer and the client will use to accommodate additional services.

(5) A description of the procedure to be used by any party to terminate the contract.

7. Section 8729 states, in part:

(a) This chapter does not prohibit one or more licensed land surveyors or civil engineers licensed in this state prior to 1982 (hereinafter called civil engineers) from practicing or offering to practice within the scope of their licensure, land surveying as a sole proprietorship, partnership, firm, or corporation (hereinafter called business), if the following conditions are satisfied:

....

(2) All land surveying services are performed by or under the responsible charge of a land surveyor or civil engineer.

8. Section 8703 states:

The phrase "responsible charge of work" means the independent control and direction, by the use of initiative, skill, and independent judgment, of the observations, measurements, and descriptions involved in land surveying work. The phrase does not refer to the concept of financial liability.

9. Title 16 of the California Code of Regulations ("Regulations") Section 476 provides in part:

To protect and safeguard the health, safety, welfare, and property of the public, every person who is licensed by the Board as a professional land surveyor or professional civil engineer legally authorized to practice land surveying, including licensees employed in any manner by a governmental entity or in private practice, shall comply with this Code of Professional Conduct. A violation of this Code of Professional Conduct in the practice of professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Section 8780 of the Code. This Code of Professional Conduct shall be used for the sole purpose of investigating complaints and making findings thereon under Section 8780 of the Code.

....

(e) Document Submittal:

(1) A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency.

(2) A licensee shall not misrepresent the completeness of the professional documents he or she prepared to his or her client or to other involved parties.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor Number L 5110, issued to Joseph Francis Dominick, III.

2. Ordering Joseph Francis Dominick, III to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/17/10

Original Signed

DAVID BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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